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In the Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-1190

STATE OF WYOMING, ET AL., PETITIONERS

v.

THOMAS S. KLEPPE, SECRETARY OF THE INTERIOR, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 13-27) is reported at 525 F.2d 66. The order of the district court granting a preliminary injunction (Pet. App. 41-43) is unreported.

JURISDICTION

The judgment of the court of appeals (Pet. App. 29) was entered on October 28, 1975. A timely pe-

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tition for rehearing and suggestion for rehearing *en banc* was denied by that court on November 24, 1975 (Pet. App. 45-46). The petition for a writ of certiorari was filed on February 20, 1976. This Court's jurisdiction is invoked under 28 U.S.C. 1254 (1).

QUESTION PRESENTED

Whether the petitioners were entitled to a preliminary injunction in 1975 with respect to the EPA Administrator's 1972 order suspending and cancelling the registration under the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") of three poisons used to kill coyotes, on the sole ground that the Administrator's order was not accompanied by an environmental impact statement.

STATUTES INVOLVED

Sections 2(z)(2)(d), 3(a)(1), and 4(a), (c) and (d) of the Federal Insecticide, Fungicide, and Rodenticide Act, "FIFRA," 61 Stat. 163, as added and amended, 7 U.S.C. 135(z)(2)(d), 135a(a)(1) and 135b(a), (c) and (d) are reproduced in the appendix to this brief (*infra*, pp. 1a-8a).

STATEMENT

1. The Federal Insecticide, Fungicide, and Rodenticide Act

Under FIFRA,[1] every "economic poison" must be registered with the Administrator of the Environ-

[1] FIFRA has been substantially superseded by the Federal Environmental Pesticide Control Act of 1972 ("FEPCA"), 86 Stat. 973-999, as amended, 7 U.S.C. (Supp. IV) 136-136y.

mental Protection Agency before it may be shipped in interstate commerce, received in the original package, or distributed, sold or offered for sale in any Territory or the District of Columbia. 7 U.S.C. 135(a), 135a, 135b(a).

Among other requirements, a poison will not be registered if it is "misbranded." This term applies, *inter alia*, when the labelling lacks necessary warnings and directions for use, which if complied with, will be adequate to protect the public and to prevent injury to humans and other vertebrate animals, vegetation, and useful invertebrate animals. 7 U.S.C. 135(z)(2)(c) and (d).

Whenever it appears to the Administrator that an "economic poison" already registered does not comply with all requirements of the Act, he may issue a notice for cancellation of the registration. Cancellation becomes effective thirty days after service of the notice on the registrant unless the registrant corrects the defect, or petitions for an initial recommendation and report by a scientific advisory committee followed by an Administrator's order and an opportunity for public hearing, or objects to the

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However under Section 4 of FEPCA, certain sections of the new Act, to be implemented by regulations, did not become effective until the regulations were issued under a directory schedule contained in the new Act. FEPCA becomes fully effective in any event on October 23, 1977. In the meantime, the regulatory provisions of FIFRA, and regulations enacted thereunder are continued in effect. See note following 7 U.S.C. (Supp. IV) 136, and Section 4, Pub. L. 94-140 (approved November 28, 1975), 89 Stat. 751, 752-753.

cancellation and requests a public hearing. If a hearing is conducted the Administrator must base his decision on the hearing record and the advisory committee report, if any. 7 U.S.C. 135b(c). However, the Administrator may immediately suspend a registration when he finds such action necessary to prevent an imminent hazard to the public; in that event, the registrant is entitled to an opportunity for expedited hearing. *Ibid.* Final orders of the agency cancelling registrations are reviewable on petition within sixty days to the appropriate court of appeals by "any person who will be adversely affected" by the order. 7 U.S.C. 135b(d). The Administrator's factual findings must be sustained if supported by substantial evidence when considered on the record as a whole. *Ibid.*

2. The Administrative Action

In the spring of 1971, sparked in part by mounting public uncertainty about the efficacy and environmental consequences of the use of poisons for predator control, the Administrator of the then newly-created Environmental Protection Agency [2] initiated a review of the FIFRA registrations of strychnine, cyanide, and sodium monofluoroacetate

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[2] The Environmental Protection Agency was created by Reorganization Plan No. 3 which was submitted to Congress on July 9, 1970, and took effect on December 2, 1970, 35 Fed. Reg. 15623 (1970). Petitioners are in error when they assert (Pet. 11) that EPA is a creature of the National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852, 42 U.S.C. 4321 *et seq.*

("1080") for use in prairie and rangeland areas for predator and rodent control. At about the same time the President's Council on Environmental Quality and the Department of the Interior created the Advisory Committee on Predator Control, chaired by Dr. Stanley Cain,[3] to study the use of these three poisons in predator control.

Various conservation groups also petitioned the Administrator for suspension and cancellation of the poisons' registrations. They invoked Section 135(z)(2)(d), which requires economic poisons to contain "a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals * * *"; and Section 135b(c), which authorizes the Administrator to initiate cancellation proceedings and order immediate suspension "when he finds that such action is necessary to prevent an imminent hazard to the public" (Pet. App. 32).

The Cain Committee Report, released in January 1972[4] (PX No. 5), examined the existing federal predator control program, the economics of predator control, the ecology of the range and the roles of predator and prey, the relationship of coyote control to sheep losses, the various control techniques, the effect of the control program on rare and endangered

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[3] Director, Institute for Environmental Quality, and Professor of Botany and Conservation, University of Michigan.

[4] Predator Control-1971, Report to the Council on Environmental Quality and the Department of the Interior by the Advisory Committee on Predator Control (January 1972).

wildlife, the rabies question, possible livestock insurance programs, and particular public land problems. It found that the poisons and their use pattern were highly nonselective [5] and posed significant secondary poisoning hazards [6] (Cain Report, 63, 65). Deaths of nontarget species were found to have occurred among populations of "[a]lmost any carnivore or scavenger, bird or mammals, regardless of size" (Cain Report, 20, 22-23, 55-58, 67-72, 82-89). Continued use of the poisons as predacides presented a definite hazard to threatened or endangered species, including the Bald and Golden Eagle, California Condor, Black-footed Ferret, Mountain Lion, Grizzly Bear, Northern Rocky Mountain Wolf, and Red Wolf (Cain Report, 69-72, 82-89).

The report questioned the effectiveness of using the toxicants to reduce coyote populations in order to protect sheep and cattle. Food availability was found to be perhaps more important as a population determinant than the predacide program; in some States coyote populations increased with use of

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[5] A poison is nonselective when its use attacks not only the target animal (in this case, the coyote, whether it has killed livestock or not) but many nontarget animals as well. Of the three poisons, even when properly used, strychnine is least selective, followed by 1080 and sodium cyanide, in that order.

[6] Secondary poisoning is poisoning of another creature who comes in contact with the originally poisoned animal. The critical factor is the persistence of the poison in its lethal form in the poisoned animal. The longer this time period, the greater the secondary poisoning hazard. 1080 poses the greatest secondary poisoning threat, followed by strychnine and sodium cyanide, in that order.

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the poisons. Sheep loss variations could not be correlated to coyote population fluctuations.[7]

The Cain Committee recommended,[8] *inter alia*, that all existing toxicants be removed from registration and use for operational predator control; that, pending de-registration, use of toxicants in federal control programs be banned; and that the federal government take all steps necessary to protect predator species on the Endangered Species list (Cain Report, 5-6).

On February 8, 1972, the President issued Executive Order No. 11643, 37 Fed. Reg. 2875, ordering all agency heads to prevent the use of chemical toxicants, except in specified emergency situations, on any federal lands or in federal mammal or bird damage control programs where the toxicant was used to kill a predatory mammal or bird or where the toxicant has a secondary poisoning effect.

The Administrator's own review of the registrations of the three poisons was soon completed and

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[7] Rising cost, the lack of competent herders, competition from synthetic fibers, and grazing quota reductions were found to be far more significant than coyote predation as causes of the western sheep industry decline. Sheep losses were attributed to natural causes, such as birth defects, inadequate mother's milk, weather, disease, starvation and naturally toxic plants, as well as predation, with the latter accounting for no more than a three percent loss (Cain Report, 45-47, 60, 83).

[8] During the preparation of its report, the committee solicited and considered the views of numerous governmental and non-governmental organizations, including those of petitioners and the interests they represent (Cain Report, 195-197). These views were summarized and discussed in the final report (Cain Report, 106-110).

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he issued PR Notice 72-2 on March 9, 1972, cancelling and immediately suspending the registration of all products containing the three poisons for use against mammalian predators (Pet. App. 31-40). The Administrator relied on the Cain Report and his own findings, which paralleled those of the Cain Committee. The Administrator emphasized the unattended and unsupervised use patterns, the impact on endangered wildlife, the ill-defined and speculative benefits, and the existence of effective non-chemical alternative coyote control techniques.

The notice of suspension and cancellation was published in the Federal Register on March 18, 1972, 37 Fed. Reg. 5718. No registrant sought an agency hearing or referral to a scientific advisory committee,[9] and no other interested party petitioned the Administrator to grant a hearing as a matter of discretion. The cancellation automatically took effect thirty days later. 7 U.S.C. 135b(c).

3. The District Court's Decision

Two years after the Administrator's action, petitioners filed a complaint challenging not only PR Notice 72-2, but also Executive Order No. 11643 and the actions or inactions of the Secretaries of the Interior, Agriculture, Health, Education, and Welfare, as well as the Administrator of EPA. More than a year later, in April 1975, petitioners moved

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[9] The only registrant in Wyoming was the Bureau of Sport Fisheries and Wildlife of the Department of the Interior (Pet. App. 25).

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for a preliminary injunction, asserting that the Administrator's action in issuing PR Notice 72-2 (by then more than three years old) was invalid because he failed to prepare an environmental impact statement required by the National Environmental Policy Act (NEPA), 42 U.S.C. 4332. The district court granted the preliminary injunction and declared PR Notice 72-2 invalid on the sole ground that the Administrator had not prepared a formal environmental impact statement under NEPA. The court enjoined the EPA from implementing PR Notice 72-2 or its policies and directed it to cancel the notice until the agency had complied with NEPA. It held that petitioners would suffer irreparable damage and loss, but made no findings to support this determination. (Pet. App. 42).

4. The Court of Appeals' Decision

On appeal from the grant of the preliminary injunction, the court of appeals reversed, with one judge dissenting. The issues before the court did not involve the merits of the EPA Administrator's order, but "whether the trial court was justified in entertaining an injunction suit notwithstanding that no effort had been made to pursue the remedies provided by law, including review of the order * * * by this Court" (Pet. App. 14). The court held that the interested parties were not deprived of administrative hearings or judicial review; instead of utilizing the statutory remedies, they sued in the district court for "injunctive relief, a remedy which was not available" (Pet. App. 20-21). The court concluded

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that given the nature of the EPA Administrator's responsibilities under FIFRA, no purpose is served by requiring an environmental impact statement for the essentially environmental determination the agency must make, especially since any alleged failure by EPA to give ample environmental consideration to the issues is always subject to review in the court of appeals (Pet. App. 22-23). Finally, the court held that the Administrator's order substantially complied with the requirements of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)) that agencies consider environmental factors in their decisions (Pet. App. 23-25).

The dissenting Judge thought the direct review remedy was illusory, and disagreed with the majority's determination that no formal impact statement was required and its conclusion that a substantially equivalent analysis had been provided by the Administrator. He also stated that there was nothing close to an imminent danger from the use of the toxicants, and that anyone contending to the contrary should bear the burden of proof to support a change in the current registration and use status (Pet. App. 27).

ARGUMENT

1. Petitioners challenge the EPA Administrator's action under a statute—FIFRA—that Congress has decided to phase out and fully replace, by October 1977, with another statute having procedures that differ from those involved here (see note 1, *supra*). In this circumstance, there is no need for review by this Court.

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2. Even if, as petitioners claim, NEPA required an impact statement in the circumstances presented here, they were not entitled to the relief they sought —a preliminary injunction. Petitioners made no effort to request the Administrator to hold a hearing on the consequences of cancelling the registration of the three poisons involved.[10] Nor, as persons claiming to be adversely affected, did they seek timely judicial review of his order in the court of appeals under 7 U.S.C. 135b(d). Instead, they resorted to a belated collateral attack on the merits of the Administrator's order in the district court. After one year of litigation, and some three years after the order, petitioners sought a preliminary injunction on the ground, raised for the first time in their motion, that the absence of an environmental impact statement at the time of the Administrator's decision caused them irreparable injury. This long delay, and the

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[10] The court of appeals correctly recognized that petitioners have no basis to complain of the lack of hearings at the administrative level. Even though FIFRA grants an absolute right to a hearing only to registrants, petitioners could have petitioned the Administrator to grant them a hearing, as persons adversely affected, just as the conservation groups, who objected to use of the poisons petitioned the Administrator to initiate cancellation and suspension proceedings. Cf. 5 U.S.C. 554(c) (right to petition for rulemaking); and 5 U.S.C. 555 (c) (all interested parties must be given opportunity to submit views, subject to time, nature of the proceeding, and the public interest). Indeed, the new statute, FEPCA, codifies this principle by expressly providing that any "person adversely affected" may request a hearing in a cancellation proceeding. 7 U.S.C. (Supp. IV) 136d(b).

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district court's failure to make any findings linking their claimed injury to the absence of an impact statement, or even determining what their injuries were, must be balanced against the Administrator's findings of potential harm to the environment from indiscriminate distribution of the three poisons on the plains. Upon such a comparison, it is clear that there was no equitable basis for a preliminary injunction. See *Sampson* v. *Murray*, 415 U.S. 61, 84, n. 53.

Moreover, if petitioners are suffering irreparable injury because supplies of the poisons are no longer available, they may petition the Administrator to modify his order on the ground of new developments. They have in fact successfully invoked this remedy with respect to one method of administering cyanide to coyotes.[11] Fundamental principles of primary jurisdiction require that petitioners pursue the same remedies as to the other poisons. See, *e.g.*, *Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 654; *Ricci* v. *Chicago Mercantile Exchange*, 409 U.S. 289, 304-306; *United States* v. *Western Pacific R. Co.*, 352 U.S. 59.

Section 102(2)(C) of NEPA did not confer jurisdiction on the district courts to grant injunctive re-

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[11] On the basis of new developments since the 1972 order, the Administrator on November 3, 1975, approved Wyoming's application for the registration and use of a method of applying cyanide which, he has found, poses a minimal threat to the environment, to humans and to non-target animals. 40 Fed. Reg. 44726; 40 C.F.R. 164.130-164.133.

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lief when the EPA Administrator issues a suspension or cancellation order under FIFRA, which establishes a careful procedure for administrative determination and judicial review designed to expedite disposition of such orders. In this case, no one requested a hearing within thirty days after the Administrator's cancellation decision was published on March 18, 1972 (37 Fed. Reg. 5718). If petitioners were adversely affected by the decision, they could have sought judicial review, but they did not do so. They should not now be permitted to "force collateral redetermination of the same issue in a different and inappropriate forum." *Port of Boston Marine Terminal* v. *Rederi. Transatlantic*, 400 U.S. 62, 72. The court below correctly held (Pet. App. 23): "If EPA fails to give ample environmental consideration to its orders, its failure in this regard can be corrected when the order is periodically reviewed, but collateral review such as was sought here was never contemplated and is not to be allowed." See *United States* v. *SCRAP*, 412 U.S. 669, 694-695 (NEPA does not repeal by implication existing statutory systems of judicial review).

3. Because the determination EPA makes under FIFRA must turn primarily on environmental factors, the court of appeals found that little purpose would be served by requiring a formal environmental impact statement that evaluates the same factors.[12]

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[12] See also the superseding statute, FEPCA, which provides for cancellation of registration when it appears that a "pesti-

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There is no conflict among the courts of appeals on this point. Other courts of appeals have concluded that when the particular statute requires EPA to analyze unavoidable environmental effects, weigh alternatives, consider the relationship between local short-term use of the environment and long term productivity, and assess any irreversible and irretrievable commitments of resources, the requirements of Section 102(2)(C) of NEPA are met.[13] NEPA's purpose is "to require government agencies to think about and weigh environmental factors before acting" (Pet. App. 22), "not * * * to force the agency to merely follow out a regimen" (Pet. App. 23).[14] This

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cide * * * when used in accordance with widespread and commonly recognized practice, generally causes unreasonable adverse effects on the environment." 7 U.S.C. (Supp. IV) 136d(b).

[13] *Anaconda* v. *Ruckelshaus*, 482 F.2d 1301, 1305-1306 (C.A. 10); *Portland Cement Ass'n* v. *Ruckelshaus*, 486 F.2d 375 (C.A.D.C.); *Essex Chemical Corp.* v. *Ruckelshaus*, 486 F.2d 427, 431 (C.A.D.C.); *International Harvester Co.* v. *Ruckleshaus*, 478 F.2d 615 (C.A.D.C.); *Buckeye Power, Inc.* v. *Environmental Protection Agency*, 481 F.2d 162 (C.A. 6); *Duquesne Light Co.* v. *Environmental Protection Agency*, 481 F.2d 1 (C.A. 3); *Appalachian Power Co.* v. *Environmental Protection Agency*, 477 F.2d 495 (C.A. 4); *Getty Oil Co.* v. *Ruckelshaus*, 467 F.2d 349, 359 (C.A. 3), certiorari denied, 409 U.S. 1125.

[14] *Environmental Defense Fund* v. *Environmental Protection Agency*, 489 F.2d 1247 (C.A.D.C.), held that no formal impact statement was required for EPA's cancellation of the FIFRA registration of DDT (489 F.2d at 1256):

> The explicit language in FIFRA requires that pesticides be deregistered if they will be injurious to man and his environment. The substantive standard established by the statute places great emphasis on the quality of man's

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does not mean that "EPA is forever and under all circumstances exempt from filing an environmental impact statement" (Pet. App. 23). But in the case of suspensions and cancellations based upon hazards to the public, adding formal requirements to the reasoned environmental analysis the Administrator must make under FIFRA, and its successor statute FEPCA (see note 1, *supra*, pp. 2-3), "would decrease environmental protection activity rather than increase it." (Pet. App. 23). See *Portland Cement Ass'n* v. *Ruckelshaus*, 486 F.2d 375, 383-384 (C.A.D.C.).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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MAY 1976.

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environment. Additionally, the procedural standards provide full opportunity for thorough consideration of the environmental issues, and for ample judicial review.

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APPENDIX

Extracts from Title 7, U.S.C.

§ 135. Definitions.

(z) The term "misbranded" shall apply—
(2) to any economic poison—

(d) if the label does not contain a warning or caution statement which may be necessary and if complied with adequate to prevent injury to living man and other vertebrate animals, vegetation, and useful invertebrate animals;

§ 135a. Prohibited acts.

(a) It shall be unlawful for any person to distribute, sell, or offer for sale in any Territory or in the District of Columbia, or to ship or deliver for shipment from any State, Territory, or the District of Columbia, to any other State, Territory, or the District of Columbia, or to any foreign country, or to receive in any State, Territory, or the District of Columbia from any other State, Territory or the District of Columbia, or foreign country, and having so received, deliver or offer to deliver in the original unbroken package to any other person, any of the following:

(1) Any economic poison which is not registered pursuant to the provisions of section 135b of this title, or any economic poison if any of the claims made for it or any of the directions for its use differ in substance from the representations made in connection with its registration, or if the composition of an economic poison differs from its composition as represented in

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connection with its registration: *Provided*, That in the discretion of the Administrator, a change in the labeling or formula of an economic poison may be made within a registration period without requiring re-registration of the product.

§ 135b. Registration of economic poisons.

(a) General requirement; single economic poisons; supplement statements; filing and contents of statements.

Every economic poison which is distributed, sold, or offered for sale in any Territory or the District of Columbia, or which is shipped or delivered for shipment from any State, Territory, or the District of Columbia to any other State, Territory, or the District of Columbia, or which is received from any foreign country shall be registered with the Administrator: *Provided*, That products which have the same formula, are manufactured by the same person, the labeling of which contains the same claims, and the labels of which bear a designation identifying the product as the same economic poison may be registered as a single economic poison; and additional names and labels shall be added by supplement statements; the applicant for registration shall file with the Administrator a statement including—

(c) Notification of noncompliance with requirements; corrections; refusal, suspension or cancellation of registration by Administrator; effective date of cancellation; advisory committees and procedures; objections; public hearings; Administrator's orders; consultation with other agencies;

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confidential information; public hazard suspension; orders reviewable; defense of registration.

If it does not appear to the Administrator that the article is such as to warrant the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with the provisions of sections 135 to 135k of this title, he shall notify the applicant for registration of the manner in which the article, labeling, or other material required to be submitted fail to comply with said sections so as to afford the applicant for registration an opportunity to make the corrections necessary. If, upon receipt of such notice, the applicant for registration does not make the corrections, the Administrator shall refuse to register the article. The Administrator, in accordance with the procedures specified herein, may suspend or cancel the registration of an economic poison whenever it does not appear that the article or its labeling or other material required to be submitted complies with the provisions of sections 135 to 135k of this title. Whenever the Administrator refuses registration of an economic poison or determines that registration of an economic poison should be canceled, he shall notify the applicant for registration or the registrant of his action and the reasons therefor. Whenever an application for registration is refused, the applicant, within thirty days after service of notice of such refusal, may file a petition requesting that the matter be referred to an advisory committee or file objections and request a public hearing in accordance with this section. A cancellation of registration shall be effective thirty days after service of the foregoing notice unless within such time the registrant (1) makes the necessary corrections; (2) files a petition requesting that

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the matter be referred to an advisory committee; or (3) files objections and requests a public hearing. Each advisory committee shall be composed of experts, qualified in the subject matter and of adequately diversified professional background selected by the National Academy of Sciences and shall include one or more representatives from land-grant colleges. The size of the committee shall be determined by the Administrator. Members of an advisory committee shall receive as compensation for their services a reasonable per diem, which the Administrator shall by rules and regulations prescribe, for time actually spent in the work of the committee, and shall in addition be reimbursed for their necessary traveling and subsistence expenses while so serving away from their places of residence, all of which costs may be assessed against the petitioner, unless the committee shall recommend in favor of the petitioner or unless the matter was referred to the advisory committee by the Administrator. The members shall not be subject to any other provisions of law regarding the appointment and compensation of employees of the United States. The Administrator shall furnish the committee with adequate clerical and other assistance, and shall by rules and regulations prescribe the procedures to be followed by the committee. The Administrator shall forthwith submit to such committee the application for registration of the article and all relevant data before him. The petitioner, as well as representatives of the Environmental Protection Agency, shall have the right to consult with the advisory committee. As soon as practicable after any such submission, but not later than sixty days thereafter, unless extended by the Administrator for an additional sixty days, the committee shall, after inde-

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pendent study of the data submitted by the Administrator and all other pertinent information available to it, submit a report and recommendation to the Administrator as to the registration of the article, together with all underlying data and a statement of the reasons or basis for the recommendations. After due consideration of the views of the committee and all other data before him, the Administrator shall, within ninety days after receipt of the report and recommendations of the advisory committee, make his determination and issue an order, with findings of fact, with respect to registration of the article and notify the applicant for registration or registrant. The applicant for registration, or registrant, may, within sixty days from the date of the order of the Administrator, file objections thereto and request a public hearing thereon. In the event a hearing is requested, the Administrator shall, after due notice, hold such public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections. Any report, recommendations, underlying data, and reasons certified to the Administrator by an advisory committee shall be made a part of the record of the hearing, if relevant and material, subject to the provisions of section 1006(c) of Title 5. The National Academy of Sciences shall designate a member of the advisory committee to appear and testify at any such hearing with respect to the report and recommendations of such committee upon request of the Administrator, the petitioner, or the officer conducting the hearing: *Provided*, That this shall not preclude any other member of the advisory committee from appearing and testifying at such hearing. As soon as practicable after completion of the hearing, but not later than

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ninety days, the Administrator shall evaluate the data and reports before him, act upon such objections and issue an order granting, denying, or canceling the registration or requiring modification of the claims or the labeling. Such order shall be based only on substantial evidence of record at such hearing, including any report, recommendations, underlying data, and reason certified to the Administrator by an advisory committee, and shall set forth detailed findings of fact upon which the order is based. In connection with consideration of any registration or application for registration under this section, the Administrator may consult with any other Federal agency or with an advisory committee appointed as herein provided. Notwithstanding the provisions of section 135a(c)(4) of this title, information relative to formulas of products acquired by authority of this section may be revealed, when necessary under this section, to an advisory committee, or to any Federal agency consulted, or at a public hearing, or in findings of fact issued by the Administrator. All data submitted to an advisory committee in support of a petition under this section shall be considered confidential by such advisory committee: *Provided*, That this provision shall not be construed as prohibiting the use of such data by the committee in connection with its consultation with the petitioner or representatives of the Environmental Protection Agency, as provided for herein, and in connection with its report and recommendations to the Administrator. Notwithstanding any other provision of this section, the Administrator may, when he finds that such action is necessary to prevent an imminent hazard to the public, by order, suspend the registration of an economic poison immediately. In such case, he shall

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give the registrant prompt notice of such action and afford the registrant the opportunity to have the matter submitted to an advisory committee and for an expedited hearing under this section. Final orders of the Administrator under this section shall be subject to judicial review, in accordance with the provisions of subsection (d) of this section. In no event shall registration of an article be construed as a defense for the commission of any offense prohibited under section 135a of this title.

(d) Judicial review; court of appeals; persons entitled to appeal, petition, record, jurisdiction, conclusiveness of findings, additional evidence, modification of findings and orders; Supreme Court; stay of administrative orders; calendar.

In a case of actual controversy as to the validity of an order under this section, any person who will be adversely affected by such order may obtain judicial review by filing in the United States court of appeals for the circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia Circuit, within sixty days after the entry of such order, a petition praying that the order be set aside in whole or in part. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator, or any officer designated by him for that purpose, and thereupon the Administrator shall file in the court the record of the proceedings on which he based his order, as provided in section 2112 of Title 28. Upon the filing of such petition the court shall have exclusive jurisdiction to affirm or set aside the order complained of in whole or in part. The findings of the Administrator with

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respect to questions of fact shall be sustained if supported by substantial evidence when considered on the record as a whole, including any report and recommendation of an advisory committee. If application is made to the court for leave to adduce additional evidence, the court may order such additional evidence to be taken before the Administrator, and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper, if such evidence is material and there were reasonable grounds for failure to adduce such evidence in the proceedings below. The Administrator may modify his findings as to the facts and order by reason of the additional evidence so taken, and shall file with the court such modified findings and order. The judgment of the court affirming or setting aside, in whole or in part, any order under this section shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 18. The commencement of proceedings under this section shall not, unless specifically ordered by the court to the contrary, operate as a stay of an order. The court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this section. [Footnote omitted.]

☆ U. S. GOVERNMENT PRINTING OFFICE: 1976 206845 250

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